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REMARKS

I. Petition Under 37 C.F.R. § 1.136(a)

Pursuant to 37 C.F.R. § 1.136(a), applicant hereby petitions for a three-month extension of the shortened statutory period set for reply to the Office Action dated March 1, 2006. The Commissioner is authorized to charge the $1020.00 fee set forth in 37 C.F.R. § 1.17(a)(3) or any other fees which may be required or credit any overpayment to Deposit Account No. 50-0369.

II. Petition Under 37 C.F.R. § 1.114

Pursuant to 37 C.F.R. § 1.114, applicant hereby timely petitions for a Request for Continued Examination including this submission for the final Office Action dated March 1, 2006. The Commissioner is authorized to charge the $790.00 fee set forth in 37 C.F.R. § 1.17(e) or any other fees which may be required, or credit any overpayment to Deposit Account No. 50-0369.

III. Introduction

Claims 39-144 are pending in this application.

Claims 39-144 are rejected.

Applicant traverses these rejections based on the remarks set forth below. Applicant respectfully requests reconsideration and allowance of the pending claims.

IV. Applicant's Reply to Rejections Under 35 U.S.C. § 102

Claims 132-134, 137-138, 139-141, and 144

Claims 132-134, 137-141, and 144 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 5,636,276 to Brugger ("Brugger"). Applicant respectfully traverses.

Brugger is purportedly concerned with a device for the distribution of music information in digital form. *See, e.g.*, Brugger, Abstract; column 1, lines 1-15. The device includes a central memory device connected to a user terminal via a communication network. *See id*, at column 3, line 65 - column 4, line 21; Fig. 1. The central memory device organizes the music information selected by the consumer for transmission in digital music information objects that may include a core and one or more additional layers. *See id*, at column 4, lines 41-52; Figs. 1-3. The core includes the basic information for the music information object, while the layers are formed by the actual

music information desired by the consumer. *See id*, at column 4, lines 53-54; column 5, lines 1-2. The user terminal, which is based on a personal computer or a workstation, receives the music information object, processes and outputs it to audio or visual reproduction devices, such as a sound board, a monitor or a printer. *See id*, at column 4, lines 15-17; column 5, lines 52-68; column 6, lines 26-35. To process the received music information object, the user terminal includes a decompression module, a decryption module, an administration module and an interpretation module. *See id*, at column 4, line 52 – column 6, line 25. The interpretation module interprets the additional layers containing the actual music information and conditions the music information into a form suitable for reproduction. *See id*, at column 5, lines 56-59. Thus, in Brugger, the user terminal receives music information objects, extracts actual music information from the received objects and outputs the extracted music information to a reproduction device, such as a sound board, monitor, or printer. *Id.*

In contrast, applicant's invention, as specified in independent claims 132 and 139 recites a system that includes targeting logic for generating a targeted header based on information indicative of a *player ID*. The claimed system further recites "download logic for downloading the targeted header with associated content to a player." In rejecting these

claims, the Examiner cites to several sections in Brugger, contending that it teaches this feature. *See* Office Action dated March 1, 2006, at 2. Applicant respectfully disagrees. One excerpt cited by the Examiner states:

> The music information object 12 is encrypted for transmission. The central memory device 2 has an encryption module 30 for this purpose. The encryption is based on the encryption table 24 which--as mentioned further above--is likewise included in the core 14, and is carried out, for example, using a pixel-matrix cryptography method.

See Brugger, at column 5, lines 45-50. Applicant respectfully points out that this passage merely deals with the concept of encrypting music information for transmission, rather than downloading a targeted header with associated content to a player as specified in applicants claims. This section of Brugger deals with encryption tasks at the transmission end of the system and has nothing to do with functions that occur at the receiving end (such as downloading a targeted header with associated content). Thus, this section may not be fairly considered to be describing download logic.

Other parts of Brugger also fail to show or suggest this feature as well. For example, in Brugger, at column 2, lines 1-15, and column 4, lines 41-68 no mention is made of generating a targeted header based on information indicative of a *player ID*. The cited sections mention the use of encryption tables and a

consumer code, but generate nothing based on player ID. In fact, player IDs are not mentioned anywhere in Brugger. Accordingly, applicant respectfully requests that this anticipation rejection be withdrawn.

V. Applicant's Reply to Rejections Under 35 U.S.C. § 103

Claims 39-131

Claims 39-131 are rejected under 35 U.S.C. §103 (a) as being unpatentable over Brugger in view of U.S. Patent No. 5,761,485 to Munyan ("Munyan"). Applicant respectfully traverses.

As explained above, one reason independent claims 132 and 139 are patentable over Brugger is because Brugger does not disclose generating a targeted header or encrypting based on information indicative of a player ID. Munyan also fails to disclose this feature. Accordingly, applicant respectfully submits claims 39-131 are also patentable over the Examiner's proposed combination of Brugger and Munyan for at least the same reasons.

In the Office Action dated March 1, 2006, the Examiner has rejected claims 39-131 explaining that applicants previous arguments were not persuasive and further explaining that:

> "Munyan teaches to code based on the device ID so that only that device can view used to view (*sic*) the content so as to prevent piracy. Given the teaching of Munyan and Brugger together one of ordinary skill would have been motivate (*sic*) to encrypt the information using the player ID prior to transmission because it would have reduces (*sic*) changes (*sic*) of illegal interception or piracy of the information."

See Office action, at page 5. However, applicants point out that this combination, even if made, still fails to produce applicants claimed invention. For example, the Examiner explained that Munyan relies a device ID so that only *that device* may view certain content (see above). Applicants agree Munyan requires that the ID code be specific to a particular hardware device and that content access is restricted on a device by device basis (*e.g.*, see Munyan, column 14, lines 55-60). However, this is merely a device ID-based password system that allows a user to access content on the device or from a content provider.

In contrast, the claimed invention specifies the use of targeting logic and encryption based on a player ID. Munyan does not disclose encryption or targeting logic at all. In fact, the password based device of Munyan does not encrypt content, but *rather merely restricts access to unencrypted content files (e.g., content files in a standard unencrypted format) to those with the proper password (ID code).* Accordingly, nothing in Munyan shows or suggests that Munyan

uses or even recognizes the usefulness of targeted headers or encryption, nor does it show or suggest either of these features based on player ID.

Moreover, although Brugger does mention encryption, nowhere in Brugger is any mention made of modifying, changing, or basing the disclosed predetermined standard encryption technique based on external information, such as a player ID (otherwise the decryption and encryption modules will not interoperate with one another). Thus, even if combined, at best, the combination would merely produce a password protected, staticly encrypted content file. No teaching or suggestion of modifying encryption or generating targeted headers is provided.

Thus, for at least these reasons, applicants respectfully submit that the proposed combination of Munyan and Brugger fail to show or suggest the claimed invention including the use of targeted headers or encryption based player IDs. Accordingly, applicants respectfully request the obviousness rejection be withdrawn and that claims 39-131 proceed to allowance.

Not Obvious to Combine

Furthermore, applicants submit it is not obvious to combine the references as proposed by the Examiner. This is true for at least several reasons. For example, there is no motivation provided in the references themselves suggesting such a

combination. The Examiner has mentioned that such motivation may be "found in the knowledge generally available to one of ordinary skill in the art" (Office Action at 3). However, the level of skill in the art *cannot* be relied upon to provide the suggestion to combine references. See, for example *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) and MPEP § 2143. In addition, the Examiner has made no finding of a specific understanding within the knowledge of a skilled artisan that would motivate one with no knowledge of the invention to arrive at the claimed limitation. See, for example, *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000). Thus, the proposed combination is improper.

Moreover, applicants point out that substantial modification of Brugger would be required to accommodate the features of Munyan and as proposed by the Examiner. No teaching is provided by either reference describing how to accomplish such modifications, further discouraging their combination. The Examiner responded by asserting that "the test for obviousness is not whether features of a secondary reference may be bodily incorporated into a primary reference." Office Action at 4.

Applicants remind the Examiner that this proposition deals with physical incorporation of one mechanical device into another and thus is not applicable as physical incorporation is not at issue here. What is at issue here are the many functional

incompatibilities that would result in attempting to combine the disparate complex electronic systems described in the references to produce the proposed combination. Attempting to implement the proposed combination without further teaching on how to reconcile the many functional conflicts and incompatibilities that would result produces a system that would change the principle operation of the references and/or require modification of the references unsatisfactory for their intended purpose. Thus, the proposed combination is improper. See, for example, *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959), *In re Dance*, 160 F.3d 1339, 1344, 48 USPQ2d 1635, 1638 (Fed. Cir. 1998), and *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Additionally, based on the above, applicants further submit that the Examiner's proposed combination is based on impermissible hindsight reconstruction, as the Examiner is merely picking and choosing from among the limitations in the references to produce the claimed invention. See, for example, *ATD Corp. v. Lydall, Inc.* 48 USPQ2d 1321 (Fed. Cir. 1998) "Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the invention." Thus, the proposed combination is improper.

Accordingly, applicant requests that the obviousness rejection be withdrawn.

PATENTS
Docket No.: 25967/008

VI. Conclusion

For the foregoing reasons, Applicant respectfully submits that the invention as claimed is patentable over the references cited by the Examiner. Accordingly, reconsideration and allowance of pending claims 39-144 are respectfully requested. The Examiner is encouraged to contact Applicant's undersigned representative to discuss any matter that may expedite prosecution of this case.

Respectfully submitted,

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